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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FARZIN JAVAHERI,

Plaintiff and Appellant,

v.

ALLEN FARSHI,

Defendant and Respondent.

B264744

(Los Angeles County
Super. Ct. No. LC101826)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Russell S. Kussman, Judge. Affirmed.

Farzin Javaheri, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

In 2014, plaintiff Farzin Javaheri (Javaheri) filed a verified complaint alleging breach of contract and tort claims against his former attorney, defendant Allen Farshi (Farshi). In 2015, after Farshi successfully demurred to the complaint, the trial court gave Javaheri leave to file an amended complaint. When Javaheri failed to file a timely amended complaint, the trial court, pursuant to Code of Civil Procedure section 581, subdivision (f)(2)¹ dismissed the action.

On appeal, Javaheri nominally challenges the trial court’s decision, but he offers no argument on why the court’s decision was in error. Instead, he devotes his opening brief to a lengthy recitation of certain purported facts arguably related to the merits of his dispute with Farshi. In addition to this strategic misstep, Javaheri’s opening brief suffers from material deficiencies in a number of critical respects. First, the statement of facts in Javaheri’s brief fails to properly cite to any evidence in the record relevant to this court’s consideration of the trial court’s order dismissing the action. Second, there is no legal argument section in the brief. In fact, Javaheri’s brief does not contain a single citation to any supporting legal authority—no case law, no statutes, no treatises, no law review articles. Given the utter inadequacy of Javaheri’s brief, we are compelled to conclude that he has forfeited the issues that he has attempted to raise on appeal. Even if he had not forfeited his issues through his failure to comply with the rules of appellate practice, there is nothing in the record before us to suggest that the trial court abused its discretion by dismissing the action after Javaheri failed to file a timely amended complaint. Accordingly, we affirm the judgment.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Section 581, subdivision (f)(2) provides as follows: “The court may dismiss the complaint as to that defendant when: . . . [¶] . . . after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.”

BACKGROUND

I. Javaheri's lawsuit

On July 1, 2014, Javaheri filed a verified complaint against Farshi, alleging both contract and tort causes of action. The gravamen of the complaint was that Farshi, who Javaheri retained in 2001 to help him in a dispute with his commercial landlord, allegedly failed to protect Javaheri's interests in that dispute and, as a result, Javaheri lost his business.

On February 18, 2015, the trial court sustained Farshi's demurrer to the complaint and granted 20 days leave to amend. Javaheri did not file an amended complaint within the allotted time, nor did he file a motion seeking additional time.

On March 24, 2015, Farshi moved to dismiss the action. In response, Javaheri filed a brief on April 10, 2015 entitled "Respond to Allen Farshi's Motion filed on March 24, 2015." However, as the trial court noted, Javaheri's response did "not explain why an amended complaint was not filed, nor d[id] it attach or enclose a proposed amended complaint." Instead, Javaheri's response argued only the merits of his claims against Farshi, asserting, inter alia, that he had "lost" the "entire[ty] of [his] investment" as an alleged result of Farshi's purported lack of "experience and knowledge."

On April 22, 2015, the trial court granted Farshi's motion. On June 10, 2015, Javaheri timely appealed.

II. Javaheri's appeal

On January 11, 2016, we granted Javaheri's motion to augment the record with documents from the instant case and from several arguably related cases (SC078524, KC034492, and OOU01770).

On April 1, 2016, after being granted three extensions of time totaling 138 days, Javaheri filed his opening brief. With his brief, Javaheri submitted a CD with more than 50 "exhibits." Those "exhibits"—many with handwritten annotations—concerned, among other things, the following: (1) the negotiation and execution in 1995 of a five-year lease of commercial space from which Javaheri could operate his laundry business; (2) Javaheri's attempt in 2000 to exercise an option to extend the lease; (3) the

subsequent dispute between Javaheri and his landlord over the termination of that lease in 2000; and (4) a variety of other documents regarding the subsequent litigation arising out of that dispute, including, inter alia, newspaper stories about participants in that litigation, such as a court clerk.

Farshi elected not to file a respondent's brief, explaining in a letter that Javaheri's opening brief is "beyond comprehension" and that it contains nothing more than "[s]landerous accusations" and "figments of [Javaheri's] imagination," and, as a result, it would be "beneath [Farshi's] dignity to respond."

DISCUSSION

I. Guiding legal principles and rules

A. Standard of review

Section 581, subdivision (f)(2) "gives the defendant the right to obtain a court order dismissing the action with prejudice once the court sustains a demurrer with leave to amend and the plaintiff has not amended within the time given." (*Parsons v. Umansky* (1994) 28 Cal.App.4th 867, 870; see *Cano v. Glover* (2006) 143 Cal.App.4th 326, 329–330 [dismissal pursuant to § 581, subd. (f)(2) with prejudice].) "The decision to dismiss an action under section 581, subdivision (f)(2) rests in the sound discretion of the trial court and a reviewing court will not disturb the ruling unless the trial court has abused its discretion." (*Gitmed v. General Motors Corp.* (1994) 26 Cal.App.4th 824, 827.)

Under the abuse of discretion standard, we give "abundant deference to the trial court's rulings." (*People v. Jackson* (2005) 128 Cal.App.4th 1009, 1018.) A trial court's exercise of discretion will not be disturbed on appeal unless "the court exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice." (*Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1434.) "It is often said that a trial court's exercise of discretion will be reversed only if its decision is 'beyond the bounds of reason.'" (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393.)

B. Appellant's burden on appeal

“It is appellant’s burden to establish an abuse of discretion. (*Gitmed v. General Motors Corp.*, *supra*, 26 Cal.App.4th at p. 827.) An appellant’s burden to affirmatively demonstrate prejudicial error is not diminished by a respondent’s failure to file a brief: “we do not treat the failure to file a respondent’s brief as a ‘default’ (i.e., an admission of error) but independently examine the record and reverse only if prejudicial error is found.” (*Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1203; see Cal. Rules of Court, rule 8.220(a)(2).) An appellant’s burden is governed, in part, by certain guiding presumptions and by the rules of appellate practice.

1. CLAIMS OF ERROR MUST BE SUPPORTED BY LEGAL CITATIONS

A touchstone legal principle governing appeals is that “the trial court’s judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited. [Citations.] [¶] It is the appellant’s responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant’s behalf.” (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.)

More specifically, an appellant may not simply incorporate by reference arguments made in papers filed in the trial court, rather than briefing them on appeal. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334.) And the appellant must present each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made; otherwise, the point will be forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830–1831, fn. 4.) This rule is “designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.” (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.)

In other words, it is not this court's role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness. Rather, an appellant is required to present a cognizable legal argument in support of reversal of the judgment. "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.) "Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, [they are] waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) Further, an appellant is required to explain the relevance of facts cited in his or her brief. This court is not ""obligate[d] . . . to cull the record for the benefit of the appellant."" (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455.)

2. CLAIMS OF ERROR MUST BE SUPPORTED BY CITATION TO THE RECORD

An appellant is also required to provide *proper* citations to the record. (See Cal. Rules of Court, rule 8.204(a)(1)(C); *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1258, fn. 12.) "It is incumbent upon the parties to an appeal to cite the particular portion of the record supporting each assertion made. It should be apparent that a reviewing court has no duty to search through the record to find evidence in support of a party's position." (*Williams v. Williams* (1971) 14 Cal.App.3d 560, 565.) It is well established that an appellant who fails to provide proper citations to the record to support appellate claims may be deemed to have forfeited such claims. (See, e.g., *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 331 [failure to present references to record results in forfeiture]; *Estates of Collins & Flowers* (2012) 205 Cal.App.4th 1238, 1251, fn. 11 [same]; *Outfitter Properties, LLC v. Wildlife Conservation Bd.* (2012) 207 Cal.App.4th 237, 248 [same].) In short, an appellant must "support arguments with appropriate citations to the material facts in the record," and if an appellant fails to provide such citations, "the argument is forfeited." (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.)

3. NO SPECIAL CONSIDERATION FOR IN PRO. PER. APPELLANTS

A party is not exempt from the rules of appellate practice, including the requirement that briefs contain arguments supported by proper citations to the record and to legal authority, because the party is representing himself or herself in propria persona. “[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) In *Nwosu v. Uba*, the court of appeal held that deficiencies in an in pro. per. appellant’s opening brief resulted in waiver of issues on appeal, explaining that “as is the case with attorneys, pro. per. litigants must follow correct rules of procedure.” (*Id.* at p. 1247.)

II. Forfeiture and no abuse of discretion

With the aforementioned principles and rules in mind, we turn to Javaheri’s challenge to the trial court’s ruling granting Farshi’s motion to dismiss.

As noted above, Javaheri’s opening brief suffers from a multitude of fatal defects. There are no proper citations to the record in this case. Indeed, many, if not most of the documents to which Javaheri refers in his brief are unrelated to the proceedings below and relate instead to one or more prior actions and a prior appeal. For example, throughout his brief Javaheri refers to documents that were apparently part of a five-volume joint appendix in a prior appeal, *Javaherifar v. Williams* (Nov. 5, 2002, B152963) [nonpub. opn.]. There is nothing in the record before us that all or any of the documents contained in that five-volume joint appendix were ever made a part of the record below² and, even if they were, there is no argument or other indication from Javaheri on how

² Among the papers Javaheri filed in the court below was a February 13, 2015 document entitled “Misleading New Counsel [sic] Mr. Allen Farshi by Two Superior Court’s [sic] Judges & Palmieri Law Firm. Based on: Five Joint Appendix Books. Volume One to Five & Palmieri Billing Statement”(the filing) Although the filing purports to be “based” on documents in the five-volume joint appendix in *Javaherifar v. Williams*, *supra*, B152963, there is nothing in the filing itself or on the docket “case summary” submitted as part of the clerk’s transcript for the instant case indicating that some or all of the five volumes of the joint appendix were ever submitted to or lodged with the trial court.

documents from a case that was decided more than a decade ago establish that the trial court in the instant action abused its discretion. In short, instead of trying to establish that the trial court somehow erred by dismissing the instant case after he failed to file a timely amended complaint, Javaheri devotes all of his brief to arguing either the merits of his claims against Farshi in this action or the merits of a prior case that he brought against other defendants allegedly responsible for the loss of his cleaning business, a case that he lost at the trial court level and on appeal.

Assuming, arguendo, that Javaheri's opening brief was not materially deficient and he did not forfeit his issues on appeal, there is still nothing in the record before us suggesting any abuse of discretion. It is undisputed that the trial court sustained Farshi's demurrer to Javaheri's complaint with leave to amend, that Javaheri did not file an amended complaint within the time allowed by the court, or file a meaningful opposition to Farshi's motion to dismiss, or seek leave to file a belated amended complaint. Under such circumstances, we must conclude that the trial court's decision to dismiss the action with prejudice was not arbitrary, capricious, or patently absurd.

Because Javaheri has failed to meet his burden of demonstrating that the trial court prejudicially erred in dismissing the action, we affirm the judgment.

DISPOSITION

The judgment is affirmed. Allen Farshi shall recover his costs, if any, on appeal.
NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.